

Dec 02, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUSTIN M. SCHMIDT,

Petitioner,

v.

COMMANDER CROSKREY,

Respondent.

4:19-cv-05172-SAB

**ORDER DISMISSING HABEAS
CORPUS ACTION WITHOUT
PREJUDICE**

Before the Court is Petitioner's First Amended Petition, ECF No. 6. By

Order filed August 9, 2019, the Court directed Petitioner, a pretrial detainee at the Benton County Jail, to amend his *pro se* Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 to show that he has exhausted his state court remedies regarding excessive bail. ECF No. 5. Petitioner is proceeding *in forma pauperis*; Respondent has not been served.

Reviewing the amended petition and attached documents in the light most favorable to Mr. Schmidt, it plainly appears that he did not properly exhaust his available state court remedies. ECF No. 6 at 6. Therefore, the petition will be dismissed. *See Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003); *Vang v. Nevada*, 329 F.3d 1069, 1075 (9th Cir. 2003).

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1 The Court notes that Petitioner's assertions in ground two, that he has been
2 subjected to pretrial incarceration without presentment or indictment and that it is
3 improper for prosecutors to choose "information," are meritless. The United States
4 Supreme Court stated long ago: "Prosecution by information instead of by
5 indictment is provided for by the laws of Washington. This is not a violation of the
6 Federal Constitution." *See Gaines v. Washington*, 277 U.S. 81, 86 (1928). There is
7 simply no federal constitutional violation when a prosecuting attorney's criminal
8 information is substituted for the grand jury's indictment. *See Hurtado v.*
9 *California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment is essential
10 to due process of law and that a state violates the Fourteenth Amendment by
11 prosecuting a defendant with a criminal information). Consequently, Petitioner's
12 assertions to the contrary are legally frivolous.

13 Petitioner has presented no basis for this Court's intervention in pending
14 state court proceedings. *Perez v. Ledesma*, 401 U.S. 82, 85 (1971). Therefore, **IT**
15 **IS HEREBY ORDERED** that this action is **DISMISSED WITHOUT**
16 **PREJUDICE** for failure to exhaust state court remedies.

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1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
2 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
3 that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
4 taken in good faith and there is no basis upon which to issue a certificate of
5 appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
6 appealability is therefore **DENIED**.

DATED this 2nd day of December 2019.



Stanley A. Sestan

Stanley A. Bastian
United States District Judge